Supreme Court, U.S.
FILED
NOV 11 2008
OFFICE OF THE CLERK

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No. 08-718

In The
SUPREME COURT OF THE UNITED STATES

LOUTO J. BRAQUET, JR.,
Defendant – Appellant – Petitioner,

v.

UNITED STATES OF AMERICA,
Plaintiff – Appellee – Respondent.

(from United States of America v. Braquet, et al.)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

LOUTO J. BRAQUET, JR.
C/O 11630 SAGECANYON DRIVE
HOUSTON, TX 77089

Questions Presented

Collateral Order Doctrine

1. May the appellate court rewrite the Notices of Appeal?

2. May the appellate court compel consent to decision-making by the clerk?

3. May an unconsented-to clerk consolidate very separate appeals, at all, much less *sua sponte* and by "secret order"?

4. May the appellate court lawfully refuse to sever illegally consolidated appeals?

Petition for a Writ of Certiorari

Braquet petitions for a writ of certiorari to the federal appellate court as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date Collateral Order Was Entered
27 October 2008 [+90: Sunday, 25 Jan 2009].

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).

Collateral Order Doctrine—*Cohen*, 337 U.S. at 547; *Cox Broadcasting*; *Coopers & Lybrand*, 437 U. S. at 468; *Moses H. Cone Hospital*; *Ritchie*.

(v) Regarding statutory challenge
N/A

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court Jurisdiction

USOA's unverified allegations.
28 U.S.C. §§ 1331, 1340, 1345; 26 U.S.C. § 7402.

Braquet's verified response(s).

To this effect:

The Sarah; *356 Bales of Cotton*; *Romero*.

Burger King, 471 U.S. at 486.

Colorado River; 28 U.S.C. § 1746, § 3002(15)(A).

And, there is no evidence satisfying § 7401.

USOA's unverified reply.

18 U.S.C. § 7 (2000) (via 26 U.S.C. § 7201 (*payment*)).

Directly related matter

See No. 08-288 (Rule 11 pet. denied 14 Oct).

"the fifth" refuses to sever the (unconsented-to) clerk's *sua sponte*, "secret" consolidation

Notices of Appeal and appellate case numbers.

There are three relevant Notices of Appeal: [58], [66], and [67]. Item [66] amends [58].

Item [58] started No. 08-20342.

Item [66] started No. 08-20470 ("470").

From [66]: "This is the second Notice of Appeal. This appeal intends to address the entire Record, and all orders entered by the trial court, the last one received being the order of 14 April 2008."

Item [67] started No. 08-20471 ("471").

From [67]: "This appeal intends to address the entire Record, and all orders entered by the trial court, the last one received being the order of 24 June 2008."

The difference is the Rule 60(b) motion.

Items [58]/[66] appeal the orders up through [54], which approves the sale, and [67] appeals the orders through [64], which denies Rule 60(b) relief. These

are very different appeals. Moreover, since [58] was filed before motion [63] was filed, much less ruled on by order [64], it's impossible to figure how "the fifth" see [58]/[66] as one in the same as [67].

Braquet's motions to sever.

Braquet filed a motion to sever in both 470 and 471. Even though the only case number "the fifth" is using is No. 08-20342, since "the fifth" refer to motion***S*** to sever (although with a singular verb), it follows that both are denied.

Why the motions to sever? Braquet first had "Notice" of the illegal consolidation when "the fifth" refused to file his Brief in 471. "the fifth" have no motion to consolidate, much less any order. Consolidation has occurred by "secret" "order" as a result of clerical decision-making. Even if there *were* a written order by the clerk, Braquet has overtly withheld consent to non-judicial decision-making. Thus, given that "the fifth" has consolidated 470 and 471 without motion, opportunity to be heard, or written order by anyone, especially by an authorized judge, thereby denying Braquet's access to pursue 471, Braquet was compelled to move for severance.

To allow "the fifth" to treat 470 and 471 as the same appeal is to allow them to rewrite Braquet's Notices of Appeal. To allow "the fifth" to rewrite Braquet's Notices of Appeal is to allow "the fifth" (A) to compel him to accept the court's unsolicited and incompetent legal advice, (B) to engage in Record-tampering, (C) to deny access to the appellate court, and (D) to raise issues of retaliation and witness-tampering, not to mention issues of aiding and abetting the on-going theft of Braquet's home.

Argument

Collateral Order Doctrine

1. May the appellate court rewrite the Notices of Appeal?

If the ***parties*** may not control the scope of the appeal, what in the world is the purpose in FED. R. APP. P. 12(c) regarding "partial Records"?

Where does the responsibility fall for defining the appeal and submitting a suitable Record? On the party! *Cf. FPC v. Transcontinental Gas Pipe Line Corp.*, 423 U.S. 326 (1976) (partial Record); *Hedgebeth v. North Carolina*, 334 U.S. 806 (1948) (partial Record). *See also Alaska Dept. of Envtl. Conservation v. EPA*, 540 U.S. 461 (2004) (incomplete Record issue raised, III B); *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992) (standard for review of habeas where facts are not developed in state court Record). Thus, if the court may rewrite the Notice of Appeal, the responsibility for incomplete Records would necessarily shift to the court doing the rewriting.

Further, partial Records are adequate for some decisions. *Cf. General Elec. Co. v. Joiner*, 522 U.S. 136 (1997); *Sheridan v. United States*, 487 U.S. 392, 402-03 n.7 (1988); *James v. Kentucky*, 466 U.S. 341, 350-51 (1984); *Arizona v. Maricopa County Med. Soc'y*, 457 U.S. 332 (1982); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961); *Lee v. Mississippi*, 332 U.S. 742 (1948); *U.S. Nat'l Bank in Johnstown v. Chase Nat'l Bank of New York City*, 331 U.S. 28 (1947). Thus, the party must surely be able to use the Notice of Appeal to designate that part of the Record that constitutes the appeal.

Ultimately, for a court to rewrite a Notice of Appeal is for the court to use its authority not only to render, and compel acceptance of, legal advice (raising all the malpractice issues so related) but also to deny access at will, as is the case, here.

2. May the appellate court compel consent to decision-making by the clerk?

No. *Cf. Gonzalez v. United States*, __ U.S. __ (12 May 2008).

3. May an unconsented-to clerk consolidate very separate appeals, at all, much less *sua sponte* and by "secret order"?

No. No consent?—no authority. *See* Question 2.

Also, where there's no Notice or opportunity to be heard, the clerk/court violates Due Process.

Further, "secret orders" violate Due Process. *Cf. Ballard v. comm'r*, 544 U.S. 40 (2005). "Secret orders" are neither filed nor served.

4. May the appellate court lawfully refuse to sever illegally consolidated appeals?

If so, then the Rule 60(b) issue is at risk of being lost to further review. Fully consistent with the concepts and rulings cited in Question 1, Braquet will be blamed for not including Rule 60(b) in the scope of "the" appeal, i.e., 470.

Remedies and Relief Requested

Given the foregoing, Braquet requests

1. That this Court grant this petition, issue the writ of certiorari, and take jurisdiction of this matter;
2. That this Court reverse "the fifth's" refusal to sever the illegally consolidated appeals;
3. That this Court grant the motion for stay pending final resolution of this appeal;
4. The opportunity to brief any additional issues the Court may identify;
5. The non-argument calendar;
6. Costs; and
7. Any and all other relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Louto J. Braquet, Jr.
Louto J. Braquet, Jr.
I reserve all my rights

c/o 11630 Sagecanyon Drive
Houston, TX 77089

Appendix A
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Appendix A

Rule 14.1(i)(i)—Appellate Opinion(s)

2008 Oct 27; motions to sever denied; motion for stay (471) denied.

U.S. COURT OF APPEALS
F I L E D
OCT 2 7 2008
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-20342

UNITED STATES OF AMERICA
Plaintiff – Appellee

v.

LOUTO J BRAQUET JR
Defendant – Appellant

. . . . . .

Appeals from the United States District Court for the Southern District of Texas, Houston

. . . . . .

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the appellant's motion for stay of execution of judgment is *DENIED*[.] [1]

IT IS FURTHER ORDERED that appellant's motions to sever appeals is [sic] *DENIED.*

MOT-21

Rule 14.1(i)(ii)—Additional Orders

Clerical activity in "the fifth"

2008 June 5 letter (No. 08-20342) (*see* [58])

(Cover page)

08-20342

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

(Letter) [N.B. all emphasis is in the original.]

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[1] [N.B. The motion for stay in 470 was denied 21 August 2008. The motion for stay in 471 was filed (mailed) 23 Sep. (orig. and two copies) and 24 Sep. (3d copy). *LJB*]

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
CHARLES R. FULBRUGE III
CLERK
TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

June 5, 2008

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-20342 USA v. Braquet
USDC No. 4:07-CV-2926

Appealing Party: Mr Louto J Braquet

We have docketed the appeal as shown above, and ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See FED. R. APP. P. and 5TH CIR. R. 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

To receive the record for preparing your brief, counsel, including CJA attorneys, must provide the

appropriate district court with a United Parcel Service, or similar commercial delivery service, account number. If you wish to receive exhibits, you must specifically request them. The district court will charge your account for shipping you the record on appeal. In the alternative, you may contact a local courier or attorney support services firm to pick up the record and ship it to you. CJA counsel may add these shipping fees to their vouchers.

You must pay the court of appeals' $450.00 docketing fee and $5.00 filing fee to the **district court clerk**, and notify us of the payment within 10 days from the date of this letter. If you do not, we will dismiss the appeal, see 5TH CIR. R. 42.3. [2]

Counsel who desire to appear in this case must sign and return a "Form for Appearance of Counsel" as required by 5TH CIR. R. 46 within 10 days from this date. You must name each party you represent, see FED. R. APP. P. 12(b) and 5TH CIR. R. 12. You may print or download the form from the Fifth Circuit web site, www.ca5.uscourts.gov. If you fail to send in the form, we will remove your name from the docket. Pro se parties do not need to file an appearance form. [⊥ 2]

Sincerely,

CHARLES R. FULBRUGE III, Clerk

---

[2] [N.B. "Unless you're Louto J. Braquet, in which case we'll dismiss your appeal even when you ***do*** pay the fee." *LJB*]

By: *L. Miles*
Linda Miles, Deputy Clerk
504-310-7709

cc: Mr Joshua David Smeltzer
DKT-1

2008 July 7 letter (No. 08-20342) (*see* [58])

(Cover page)

08-20342

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

(Letter) [N.B. all emphasis is in the original.]

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

July 7, 2008 [3]

---

[3] [N.B. This is the only "Scheduling Order" letter issued for any of the three appeals. *LJB*]

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-20342 USA v. Braquet
USDC No. 4:07-CV-2926

We have docketed the appeal as shown above, and ask you to use the case number in future inquiries. You can obtain a copy of our briefing checklist on the Fifth Circuit's Website "www.ca5.uscourts.gov/clerk/docs/brchecklist.pdf".

Briefing Notice. The record is complete for purposes of the appeal, see FED. R. APP. P. 12. Appellant's brief and record excerpts are due within 40 days of the date shown above, see FED. R. APP. P. & 5TH CIR. R. 28, 30, and 31. See also 5TH CIR. R. 30.1.2 and 5TH CIR. R. 31.1 to determine if you have to file electronic copies of the brief and record excerpts. [If required, **electronic copies MUST be in Portable Document Format (PDF).**]

Policy on Extensions. The court grants extensions sparingly and under the criteria of 5TH CIR. R. 31.4. You must contact opposing counsel and tell us if the extension is opposed or not. 5TH CIR. R. 31.4 and the Internal Operating Procedures following rules 27 and 31 state that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

Reply Brief. We do not send cases to the court until

all briefs are filed, except in criminal appeals. Reply briefs must be filed within the 14 day period of FED. R. APP. P. 31(a)(1) . See 5TH CIR. R. 31.1 to determine if you have to file electronic copies of the brief, and the format.

Brief Covers. THE CASE CAPTION(S) ON BRIEF COVERS MUST BE EXACTLY THE SAME AS THE CASE CAPTION(S) ON THE ENCLOSED TITLE CAPTION SHEET(S). **YOU WILL HAVE TO CORRECT ANY MODIFICATIONS YOU MAKE TO THE CAPTION(S) BEFORE WE SUBMIT YOUR BRIEF TO THE COURT.**

Dismissal of Appeals. The clerk may dismiss appeals without notice if you do not file a brief on time. [⊥ 2]

Appearance Form. If you have not filed an appearance form as required by 5TH CIR. R. 46.3, you must do so within 10 days from this date. You must name each party you represent, see FED. R. APP. P. and 5TH CIR. R. 12. You may print or download the "Form for Appearance of Counsel" from the Fifth Circuit's web site, www.ca5.uscourts.gov.

To receive the record for preparing your brief, counsel, including CJA attorneys, must provide the appropriate district court with a United Parcel Service, or similar commercial delivery service, account number. If you wish to receive exhibits, you must specifically request them. The district court will charge your account for shipping you the record on appeal. In the alternative, you may contact a local courier or attorney support services firm to pick

up the record and ship it to you. CJA counsel may add these shipping fees to their vouchers.

Once you obtain the record, you should check it within 10 days of receipt for any missing or incomplete items. If you need to request a supplemental record or order transcripts, do so promptly. The court will not grant extensions of time to file your brief because you did not timely check the record.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: *Steven A. Totora*
Steve Totora, Deputy Clerk
504-310-7667

Enclosure
cc w/encl: Mr Robert J Branman
BR-1

[⊥ 3]

Case No. 08-20342

UNITED STATES OF AMERICA
Plaintiff – Appellee
v.
LOUTO J BRAQUET JR
Defendant – Appellant

2008 July 22 letter (No. 08-20470) (*see* [66])

(Cover page)

08-20470

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

(Letter) [N.B. all emphasis is in the original.]

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

July 22, 2008

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-20342 USA v. Braquet
USDC No. 4:07-CV-2926
AS TO APPEAL FILED 7/11/08

Appealing Party: Mr Louto J Braquet

We have docketed the appeal as shown above, and

ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See FED. R. APP. P. and 5TH CIR. R. 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

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Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: *Sabrina B. Short*
Sabrina B. Short, Deputy Clerk
504-310-7817

cc: Mr Robert J Branman
Mr Joshua David Smeltzer

DKT-1

2008 July 22 letter (No. 08-20471) (*see* [67])

(Cover page)

08-20471

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

(Letter) [N.B. all emphasis is in the original.]

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

July 22, 2008

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-20342 USA v. Braquet
USDC No. 4:07-CV-2926
AS TO APPEAL FILED 7/14/08

Appealing Party: Mr Louto J Braquet

We have docketed the appeal as shown above, and ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See FED. R. APP. P. and 5TH CIR. R. 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

To receive the record for preparing your brief, counsel, including CJA attorneys, must provide the appropriate district court with a United Parcel Service, or similar commercial delivery service, account number. If you wish to receive exhibits, you must specifically request them. The district court will charge your account for shipping you the record on appeal. In the alternative, you may contact a local courier or attorney support services firm to pick up the record and ship it to you. CJA counsel may add these shipping fees to their vouchers.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: *Sabrina B. Short*
Sabrina B. Short, Deputy Clerk
504-310-7817

cc: Mr Robert J Branman
Mr Joshua David Smeltzer

DKT-1

2008 August 28 letter (re: filings for 471) – "Secret order", *sua sponte* consolidation by clerk's office

(Cover page)

08-20342

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

(Letter) [N.B. all emphasis is in the original.]

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

August 28, 2008

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-20342 USA v. Braquet
USDC No. 4:07-CV-2926

We received your appellant's brief and record excerpts under appeal number 08-20471. Please be advised that the appeal number 08-20342 represents the 3 notices of appeal filed on May 22, 2008; July 11, 2008 and July 14, 2008. In light of the fact that an appellant's brief and record excerpts have already been filed, we are taking no action on this set of briefs and record excerpts. You are only allowed to file one brief addressing all the issues you are appealing in the notices of appeal listed above.

Sincerely,

CHARLES R. FULBRUGE III, Clerk
By: *Connie Brown*
Connie Brown, Deputy Clerk
504-310-7671

cc: Mr Joshua David Smeltzer

BR-9

For the trial court orders, *see generally* No. 07-1419, App. A., and No. 08-288, App. A.

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

Here, none.

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will suffice